

**Response to EPA Request for Information  
Regarding OU2 of the Pierson's Creek Superfund Site**

This serves as the response by Troy Chemical Corporation, Inc. ("TCC") and Troy Corporation to the U.S. Environmental Protection Agency, Region II ("EPA") information request dated February 26, 2019, which was received on March 1, 2019 (the "Information Request" or "RFI"). We note that although EPA addressed the Information Request to Troy Corporation, TCC is the owner and operator of the plant site at One Avenue L in Newark. Therefore most of the information requested is in the possession of TCC rather than Troy Corporation.

Although TCC and Troy Corporation have made a diligent and good faith effort to respond to the requests set forth in the Information Request as fully and completely as practicable within the short period of time provided, TCC and Troy Corporation nonetheless respectfully set forth specific objections below as well as the general objections in Appendix A to preserve its rights. The responses below are based on the information available to TCC and Troy Corporation as of the date of this response. TCC and Troy Corporation respectfully reserve the right to amend or supplement the responses below if and when additional information is available. Subject to, and without waiving such objections and reservations, TCC and Troy Corporation respond as stated below. Each of the numbered items listed in the EPA Information Request are set forth below in bold, and TCC and Troy Corporation's response is provided below each such item.

This response contains confidential information, and TCC and Troy Corporation are therefore providing redacted and unredacted versions. The substantiation for the confidentiality claims is set forth in Appendix B. The documents responsive to EPA's requests are also enclosed.

**1) This question pertains to the current company located at One Avenue L, in Newark, New Jersey (hereinafter the "facility"). If this company did or currently does business under more than one name, list each name.**

**RESPONSE:** The current company located at One Avenue L, in Newark, New Jersey is Troy Chemical Corporation, Inc. ("TCC"). TCC was a new corporate entity created in June 1980 when it purchased certain assets of the former Troy Chemical Corporation. See 1980 Asset Purchase Agreement ("APA") at TCC0008-TCC0300. To avoid confusion, TCC used the name New Chemical Corp. at the time of the 1980 transaction. New Chemical Corp. immediately changed its name to Troy Chemical Corp., Inc., following the June 1980 transaction. At the same time, the former Troy Chemical entity amended its certificate of incorporation to change its name from Troy Chemical Corporation to E.W.H. Chemical Corporation. On June 5, 1981, E.W.H. Chemical executed a certificate of dissolution with the unanimous written consent of its shareholders, effective February 15, 1982. The former Troy Chemical entity is referred to as E.W.H. Chemical throughout these responses.

TCC has never done business under any other names.

**a) Is Troy Chemical Corporation, Inc. (hereinafter, "Troy Chemical") the legal name of the company? If not, please provide the correct name.**

**RESPONSE:** Yes.

**b) State the name and address of the president or the chairman of the board, or other presiding officers of Troy Chemical.**

**RESPONSE:**

TCC's current officers are:

Christopher E. Smith, President

William B. Smith, Executive Vice President and Chief Operating Officer

Alexander Gerardo, Vice President, Government Relations

Thomas W. Wisner, Vice President and Corporate Controller

Matthew Bodino, Secretary and Treasurer

The address for the above officers is 1 Avenue L, Newark, NJ 07105.

**c) Identify the date of incorporation and the state of incorporation of Troy Chemical and the company's agent for service of process in the state of incorporation and in New Jersey.**

**RESPONSE:** TCC is a New Jersey corporation, established June 20, 1980. TCC's registered agent is Corporation Service Company, 100 Charles Ewing Building, Ewing, NJ, 08628.

**2) Is Troy Chemical located at the address of One Avenue L in Newark, New Jersey, a subsidiary or affiliate of another company? If yes, please identify the name of each related company. For each related company, describe the relationship to the company currently located at the facility and indicate the date and manner in which each relationship was established.**

**RESPONSE:**

[REDACTED]

[REDACTED]

See Corporate Organization Chart at TCC0001.

**3) In what year did Troy Chemical begin to operate at the facility?**

**RESPONSE:** 1980.

**4) Please provide a copy of the deed or deeds to the property or properties that comprise the facility. If the property(ies) is/are held in the name of another entity, please provide the**

**name of the entity, its relationship to Troy Chemical and list the company president or chairman of the board or other presiding officers of that company.**

**RESPONSE:** The deed that transferred the site to TCC in 1980 is attached at TCC0002-TCC0007.

**5) If Troy Chemical does not own the facility, identify the entity from whom Troy Chemical leases or rents the facility. Please provide copies of any lease or rental agreements.**

**RESPONSE:** TCC owns the facility.

**6) Is Troy Chemical the successor to any liabilities, including those under CERCLA, of any previous company located at the facility?**

**RESPONSE:** This response requires a legal conclusion and is therefore beyond the scope of EPA's authority to request information under CERCLA.

Without waiving the foregoing objection, TCC is not a successor to any prior entity that owned or operated the Site. TCC was created in 1980, when it purchased certain assets of E.W.H. Chemical. E.W.H. Chemical subsequently wound up its affairs and dissolved in 1982. TCC is a separate corporate entity from E.W.H. Chemical, and is not a successor to E.W.H. Chemical or any other entity.

The general rule of corporate successorship accepted in most states, including New Jersey, is non-liability for corporations acquiring assets from other entities, with four major exceptions: "[t]he purchaser may be liable where (1) it assumes liability; (2) the transaction amounts to a consolidation or merger; (3) the transaction is fraudulent and intended to provide an escape from liability; or (4) the purchasing corporation is a mere continuation of the selling company." *United States v. Gen. Battery*, 423 F.3d 294, 305 (3d Cir. 2005); *accord State of New York v. Nat'l Servs. Indus.*, 460 F.3d 201, 209 (2d Cir. 2006).

None of these exceptions apply to make TCC a successor corporation to E.W.H. Chemical. First, a New Jersey corporation that has dissolved and distributed its assets, as has E.W.H. Chemical, cannot be subject to CERCLA liability. Thus, TCC cannot be said to have any indemnification obligation to E.W.H. Chemical. Any share of liability that is attributable to E.W.H. Chemical is an unrecoverable orphan share. Second, TCC's purchase of assets from E.W.H. Chemical was not a consolidation or merger. Third, there is no evidence or suggestion that the sale of E.W.H. Chemical's assets was fraudulent in any respect. Fourth, there was no continuation of enterprise from E.W.H. Chemical to TCC.

The 1980 Asset Purchase Agreement ("APA") and the following factors, among others, demonstrate that TCC was a new-company purchaser of assets from E.W.H. Chemical, not a successor:

- The asset purchase itself did not cause the dissolution of E.W.H. Chemical or destroy potential remedies against E.W.H. Chemical.
- TCC brought in new principals (new shareholders, directors, lenders, and auditors) and new top management (specifically, a new president and executive vice president) and implemented a new management organization.
- E.W.H. Chemical's executives and directors did not take over and control the new company. TCC had no directors in common with E.W.H. Chemical.
- The sale was for fair and arm's length consideration.
- TCC made immediate changes to the organization, operations and business procedures, including replacing all senior management and upgrading production and waste management after the asset purchase.
- TCC had a new shareholding group. A few E.W.H. Chemical managers were required to purchase a nominal number of TCC shares for an agreed transition time to facilitate a smooth transition of the business. Most of these shares were redeemed upon completion of the transition.

The 1980 Asset Purchase Agreement between TCC and E.W.H. Chemical is attached at TCC0008-TCC0300.

**7) Describe in detail the company's past and current relationship with any affiliated company(ies) at this facility, including but not limited to any companies identified in your response to the preceding question, and by responding to the following questions:**

**a) State the name of the prior operator of the facility**

**RESPONSE:** TCC is not affiliated with, or a successor to, any prior owner or operator at the Newark site.

As described in previous submissions to EPA, the Newark site had many chemical manufacturing owners and operators spanning a time of at least 100 years prior to TCC. However, the immediate prior owner and operator was the E.W.H. Chemical entity described in response to Question 1.

On information and belief, the prior owners and operators of the site before TCC were as follows:

Company Name	Site Address	Estimated Dates at Site: Ownership/Operator/Lease
E.W.H. Chemical	One Avenue L	Circa 1953 to June 1980
Pulaski Skyway Realty Corp.	One Avenue L	Circa 1951 to 1960

Wilson Refining Co.	Building 61, One Avenue L	Leased portion of site during some part of the 1950s
American Cyanamid Company/ Calco Chemical Company	Some or all of One Avenue L and/or 338 Wilson Avenue	1931 to 1960
Heller and Merz Company	Some or all of One Avenue L and/or 338 Wilson Avenue	1872 to 1930
Amalgamated Dyestuff and Chemical	Some or all of One Avenue L and/or 338 Wilson Avenue	Circa prior to 1938
American Ultramarine and Globe Aniline Works	Southern end of parcel, potentially on current TCC site	1892 to 1931

These entities occupied various portions of the larger parcel of land that included the current TCC site as well as the adjacent Albert Steel Drum/Prentiss site at 338 Wilson Avenue.

American Cyanamid, Calco, Heller and Merz Company, Amalgamated Dyestuff and Chemical, and American Ultramarine and Globe Aniline Works are all related entities: American Ultramarine and Globe Aniline Works' name was changed to Heller and Merz around 1880, Amalgamated Dyestuff and Chemical was acquired by Calco in 1938, Heller and Merz Company was acquired by Calco in 1930, Calco was acquired by American Cyanamid in 1929. In 1991, American Cyanamid consolidated its chemicals business into Cytec, its subsidiary. In December 1993, Cytec became an independent entity and was no longer a subsidiary of American Cyanamid. Cytec was then purchased by the Solvay Group in 2015. Wyeth Holdings in turn acquired American Cyanamid in 1994. BASF subsequently bought the operations of American Cyanamid's Agricultural Division from Wyeth in 2000. American Cyanamid and its related entities manufactured dyes and other chemicals on the TCC site.

**b) Did Troy Chemical retain the liabilities of the previous company for operations prior to Troy Chemical operating at the facility?**

**RESPONSE:** This response requires a legal conclusion and is therefore beyond the scope of EPA's authority to request information under CERCLA.

Without waiving the foregoing, the Asset Purchase Agreement makes clear that TCC has no current liability for any operations prior to TCC's creation in June 1980.

[REDACTED]

[REDACTED]

Finally, given that E.W.H. Chemical filed for dissolution in 1981, which was completed in 1982, and the period for filing claims expired in 1985, claims cannot be brought against E.W.H. Chemical so that company can have no liability for which TCC could be asked to respond.

**8) Describe the relationship between the current company, Troy Chemical, and the following:**

**a) Pre-1980 Troy (the corporation that operated at the 1 Avenue L facility in Newark, New Jersey before Troy Chemical operated at the same address.)**

**RESPONSE:** None. See response to Question 1.

**b) Troy Corporation with an address of 8 Vreeland Road, Florham Park, New Jersey.**

**RESPONSE:** See response to Question 2.

**c) New Corporation with an address of 8 Vreeland Road, Florham Park, New Jersey**

**RESPONSE:** See response to Question 1 above.

**9) If Troy Chemical has had any changes in company name, ownership or structure or has obtained an interest in or divested itself of an interest in any other corporation, subsidiary, division or other entity, identify such transaction.**

**RESPONSE:** [REDACTED]

[REDACTED] There have been no other changes in ownership, name and corporate structure of TCC beyond those described in response to Question 2.

**10) If not already identified, please describe any other changes in ownership of any company that was located at the facility from on or around 1950 to the present including the date of any ownership change. If any owner was/is a company, identify if the company was a subsidiary or division of another company. In your identification of any company,**

please provide the full company name, the state of incorporation, and all fictitious names used/held by that company.

**RESPONSE:** See responses to Questions 1, 2 and 7(a) above.

**11) For each company at the facility that is a subsidiary of another company, please provide a chart that details the corporate structure from this facility through all intermediary entities to the ultimate corporate parent. For purposes of this information request, the term “ultimate corporate parent” refers to the corporate entity that while owning or controlling the majority of the shares of common stock in a subsidiary corporation is not primarily owned/controlled by another corporation.**

**RESPONSE:** An organization chart indicating the ownership of Troy Chemical Corporation, Inc. and its subsidiaries is attached at TCC0001.

**12) For each change in ownership of Troy Chemical, describe the type of change, *e.g.*, asset purchase, corporate merger or name change, as well as the date of the change in ownership.**

**RESPONSE:** There have been no changes in ownership of TCC other than those described in response to Questions 2 and 9.

**13) For all ownership changes identified in your responses to questions 9 and 10, above, please provide a copy of the merger document, buy/sell agreement or other agreement that effected the ownership change.**

**RESPONSE:** The 1980 Asset Purchase Agreement between TCC and E.W.H. Chemical is attached at TCC0008-TCC0300. [REDACTED]

**14) Please provide copies of any indemnification agreements associated with the transactions identified in your responses to questions 9 and 10, above. Please identify all indemnity payments that have been sought pursuant to any agreements, describe the circumstances surrounding each attempt to seek indemnity, the current status of each attempt and if any attempt was resolved, describe the final resolution.**

**RESPONSE:** [REDACTED]

Following its sale of assets to TCC, E.W.H. Chemical took the following steps to dissolve under New Jersey law: In June 1980, the company amended its certificate of incorporation to change its name from Troy Chemical Corporation to E.W.H. Chemical Corporation. Next, in June 1981, E.W.H. Chemical executed a certificate of dissolution with the unanimous written consent of its shareholders, effective February 15, 1982. On January 22, 1982, E.W.H. Chemical filed with the state division of taxation a Tax Clearance Certificate, certifying that it had paid all taxes, fees, or penalties levied against it.

Section 14A:12-9 of the New Jersey Business Corporation Act governs the effect of corporate dissolution. N.J. Stat. Ann. § 14A:12-9. A dissolved corporation is not deprived of all vitality, but it “shall carry on no business except for the purpose of winding up its affairs . . . .” *Id.* See also Stuart L. Pachman, Title 14A - Corporations: Commentaries and Annotations 558 (2007). The dissolved corporation continues to be subject to suit, and claims may be asserted against a shareholder where the corporation’s assets are insufficient to satisfy the claim. N.J. Stat. Ann. §§ 14A:12-9(2)(e), 14A:12-13(1)(b). In 2001, however, the legislature adopted a statute imposing a bar on creditor claims against the shareholders of a dissolved corporation unless those claims are filed within five years of the corporate dissolution. See N.J. Stat. Ann. § 14A:12-13.1. Once a corporation finishes winding up, it ceases to exist, and is immune from suit. *Global Landfill Agreement Group v. 280 Dev. Corp., et al.*, 992 F. Supp. 692, 695 (D.N.J. 1998). Therefore no current Troy entity has any indemnification obligations with regard to the E.W.H. Chemical, and vice versa.

To the best of TCC’s knowledge, no claims have been made under the special assumption of liabilities provision of the APA.

**15) Did any employees who worked for pre-1980 Troy continue to work for Troy Chemical after it began operating at the facility? For those employees who continued to work for Troy Chemical, was sick-leave and vacation time that accrued prior to when Troy Chemical began operating at the facility carried forward?**

**RESPONSE:** Yes, many plant workers and office employees from E.W.H. Chemical were hired by TCC. Based on the provisions of the APA, accrued leave was not carried forward for these former E.W.H. Chemical employees.

**16) Were any senior management officials who worked for pre-1980 Troy retained to work for Troy Chemical after it began operating at the facility? If yes, please identify by name those senior management officials, their positions held at pre-1980 Troy and Troy Chemical, and their time of service with pre-1980 Troy and Troy Chemical.**

**RESPONSE:** No member of TCC’s board of directors had any relationship to E.W.H. Chemical.

[REDACTED]



[REDACTED] The employment agreements identify their titles with TCC as follows: William Singer, Vice President—Technical Director; Milton Nowak, Vice President—Manufacturing; and John Oates, Vice President—Technical Sales. Shortly after the acquisition, Milton Nowak's role was changed to research and development.

TCC does not have complete information regarding these officials' prior service with E.W.H. Chemical. However, at the time of the acquisition in 1980, Elias Singer was President of E.W.H. Chemical, Milton Nowak was Vice President, and William Singer was Secretary-Treasurer. On information and belief, Elias Singer was with E.W.H. Chemical from the time it was formed in the 1950s. On information and belief, Milton Nowak came to E.W.H. Chemical later, and was in charge of the manufacturing of paint driers. John Oates was responsible for technical sales, and William Singer handled product development, but the dates of their service at E.W.H. Chemical are not known.

**17) At the time that Troy Chemical began operating at the facility, identify all plant processes, manufacturing methods and/or procedures that were retained from the operations of pre-1980 Troy. If any processes, manufacturing methods and/or procedures were discontinued when Troy Chemical began its operations, identify the activities and the approximate time when those activities were discontinued.**

**RESPONSE:** TCC and Troy Corporation object to this request as overly broad, vague and burdensome. The terms "processes, manufacturing methods and/or procedures" are vague and undefined. TCC and Troy Corporation cannot enumerate every process, method or procedure that may have been retained or discontinued in 1980 and thereafter.

Notwithstanding these objections and the objections set forth in Appendix A, TCC and Troy Corporation provide the following: some operations were retained by TCC, but TCC began phasing out the production of mercury compounds at the point of purchase in 1980. Formulation of biocides using mercury were a small part of TCC's operations, constituting only about 6% of the operations in June of 1980. TCC completely phased out all mercury-related operations by about 1987. TCC's use of petroleum distillates, solvents and oils also was significantly reduced in or about 1981 when TCC phased out its manufacture of paint driers.

TCC has made continuous process and manufacturing changes, as well as capital improvements, over the past 39 years. TCC implemented a waste and surplus barrel clean up on the plant site immediately after the acquisition, including interacting with NJDEP. TCC upgraded all the bulk storage facilities to new standards, and constructed new containments. TCC improved drains to PVSC and rewired the entire plant to substantially improve the safety and efficiency of the electric supply. TCC paved the majority of the site with concrete or asphalt soon after taking over in 1980.

TCC also made personnel changes, including a new office manager, accounting department, and hiring a former NJDEP official as the environmental compliance manager. The sales division

was also reorganized. Over the years, new product lines were added and global operations and markets were expanded.

**18) Did any shareholders of pre-1980 Troy become shareholders of the Troy Chemical which began operating at the facility in 1980?**

**RESPONSE:**

Such transactions do not constitute a de facto merger. *See Bud Antle, Inc. v. Eastern Foods, Inc.*, 758 F.2d 1451, 1457-58 (11th Cir. 1985) (“Even if the corporation sells to another corporation its entire business operation and all assets, in exchange for some consideration other than stock, the two corporate entities remain distinct and intact. The corporate entities have not merged, and each is liable for its own debts, absent fraud or one of the other exceptions listed above.”).

**19) Did Troy Chemical acquire any intangible assets from pre-1980 Troy? Your response is to include but not be limited to goodwill, client lists, all trademarks, patents and copyrights as well as exclusive rights to market products, sales territories and rights to fictitious names.**

**RESPONSE:** Notwithstanding the objections set forth in Appendix A, TCC and Troy Corporation provide the following:

**20) Has the value assigned to any intangibles identified in your response to # 19 above been revalued? If yes, provide the date of the revaluation and the reasons for the revaluation.**

**RESPONSE:** TCC and Troy Corporation are not aware that any of the material intangibles acquired in 1980 have been revalued.

**21) Describe the nature of pre-1980 Troy’s business and the nature of Troy Chemical’s business once it began operating at the facility, including whether Troy Chemical held itself out to the public as the same entity as pre-1980 Troy.**

**RESPONSE:** Subject to the objections set forth in Appendix A, and the fact that the terms “the nature of” E.W.H. Chemical’s and TCC’s businesses are vague, TCC and Troy Corporation provide the following response: TCC did not operate the facility prior to TCC’s formation in 1980 and therefore has limited knowledge of operations prior to June 1980. E.W.H. Chemical had developed, manufactured and sold a small amount of a fungicide known as IPBC at the site,

and TCC developed and expanded sales and technology of that business. E.W.H. Chemical manufactured and sold mercury-based products. TCC phased out manufacturing of mercury-based products, instead importing those materials for a period of time, and then phased out such production entirely by about 1987. New product lines were developed, markets added, and global operations expanded, as described in response to Question 17.

TCC made a point of emphasizing to customers that it was a different business than the predecessor company, and did not hold itself out as the same entity as E.W.H. Chemical.

**22) If not already identified, please list any officers, directors, and majority shareholders of pre-1980 Troy that remained with Troy Chemical after it began operating at the facility.**

**RESPONSE:** This information was provided in response to Questions 16 and 18.

**23) If any of the documents solicited in this information request are no longer available, please indicate the reason why they are no longer available. If the records were destroyed, provide the following information:**

**RESPONSE:** Subject to the objections set forth in Appendix A, TCC and Troy Corporation provide the following response. This RFI covers a very long time period and broad set of issues, and therefore it is possible that documents may no longer be available. However, TCC and Troy Corporation are not aware of any specific documents requested in this RFI that are no longer available or have been destroyed. Therefore, no further response to the subparts below is required.

**a) Your document retention policy.**

**b) A description of how the records were destroyed (burned, archived, trashed, etc.) and the approximate date of destruction.**

**c) A description of the type of information that would have been contained in the documents.**

**d) The name, job title and most current address known by you of the person(s) who would have produced these documents; the person(s) who would have been responsible for the retention of these documents; and the person(s) who would have been responsible for the destruction of these documents.**

**24) At any time during Troy Chemical's operations at the facility, were any hazardous substances discharged to or disposed of in Pierson's Creek including its tributaries? If yes, identify the hazardous substances, estimate the amount of material discharged to or disposed of in Pierson's Creek including its tributaries and the frequency with which this discharge or disposal occurred. Also, please include the analytical results of any sampling of the Creek which might have been done after any discharge or disposal occurred.**

**RESPONSE:** See the general objections set forth in Appendix A. In addition, TCC and Troy Corporation object to Request 24 as vague, overbroad in scope, and unduly burdensome. The request uses a series of undefined and ambiguous terms, such as “discharge.” Assuming that Request 25 covers accidental discharges, TCC and Troy Corporation interpret Request 24 as limited to non-accidental disposal and discharges in the Creek and its tributaries. TCC and Troy Corporation believe that TCC’s past waste disposal and discharge permits are a matter of public record, and that EPA should already have access to such records.

Subject to the foregoing, TCC and Troy Corporation provide the following: TCC did not dispose of hazardous substances in the Creek and its tributaries. TCC is and was authorized to discharge wastewater to the Passaic Valley Sewerage Commission (PVSC) pursuant to a PVSC Sewer Connection Permit. The only discharges to the concrete ditch during TCC’s operations was non-contact cooling water discharged pursuant to an NPDES permit, and those discharges were discontinued in 1988. Wastewater generated, including storm water, is managed/treated via an enclosed on-site treatment system and subsequently discharged to PVSC. Specifically, all effluent was pumped from a sump to the treatment system. The treatment system allowed insoluble compounds to settle in a stainless steel settling tank, and then the supernatant was pumped to another tank where it was further treated. The solids that remained in the tank were then disposed as solid waste. These engineering controls are maintained under Troy Chemical Corporation’s Discharge Prevention Containment and Countermeasure (DPCC)/Discharge Cleanup and Removal Plan. Hazardous wastes such as oils and solvents are collected and disposed off-site pursuant to regulatory requirements.

**25) At any time during Troy Chemical’s operations, please identify any leaks, spills, floods, explosions, fires or other incidents of accidental material discharge that occurred at the facility during which or as a result of which any hazardous substances, were released onto the property, into the waste water or storm drainage system at the facility that may have found its way into Pierson’s Creek including its tributaries. Provide any documents or information relating to these incidents, including the ultimate disposal of any contaminated materials.**

**RESPONSE:** See the general objections set forth in Appendix A. In addition, TCC and Troy Corporation object to Request 25 as vague, overbroad in scope, and unduly burdensome. The request uses a series of undefined and ambiguous terms, such as “leaks”, “spills”, “floods”, and “other incidents.” Also, while TCC and Troy Corporation are prepared to cooperate with EPA and respond to reasonable requests for information, TCC and Troy Corporation believe that any non de minimis events that may have led to discharges to the Creek would have been reported to NJDEP and/or EPA. EPA should coordinate its requests with the reporting programs and protocols already in place as established by NJDEP, in order to avoid duplication and undue burdens.

The Ironbound District industrial area where the TCC site is located is flood-prone, and there have been numerous and frequent flooding events since TCC began operations in 1980 that would not have been recorded by TCC until about 2008 when the City of Newark rerouted the Pierson’s Creek drainage ditch in a pipeline around the Federal Express and TCC sites. With

respect to flooding on the TCC site, between 1981 and 2008, TCC experienced flooding of its plant site, laboratories and offices due to inadequate storm sewer capacity in the City of Newark.

While storm water management in the area is generally poor and the TCC site was subject to flooding as discussed above, storm water which falls on the site is discharged to PVSC.

Subject to the foregoing objections, TCC and Troy Corporation provide the following documents regarding incidents of accidental material discharge that occurred at the facility since June 1980 as a result of which hazardous substances may have been released: See responsive documents at TCC0367-TCC0397.

**26) If known, when was the culvert that contains Pierson's Creek on the Troy Chemical property constructed?**

**RESPONSE:** The City of Newark (the "City") is the owner of Pierson's Creek, a storm water drainage ditch running from north of Wilson Avenue to Newark Bay that served at least 700 acres in an industrial area, and which includes a concrete ditch/culvert on the TCC Site. Therefore, EPA should direct its requests for information regarding the origin of Pierson's Creek and culvert to the City.

On information and belief, TCC and Troy Corporation provide the following response. In or around 1852, the City adopted plans to construct an underground sewer and drainage system that would empty into the Passaic River. *See* <http://www.usgennet.org/usa/nj/state/EssexNewarkSewer.htm>. The City continued to expand the sewer and drainage system throughout the nineteenth century. *Id.* As a result of the expansion of the sewer and drainage system, the City learned that it could no longer utilize the Passaic River as its water supply because the discharge of industrial waste to the City's newly constructed sewer and drainage system resulted in contaminants being introduced to the Passaic River. *Id.*

On the TCC Site, the City-owned sewer system included a concrete ditch/culvert that traversed the length of the site connecting with Pierson's Creek south of the TCC Site. The concrete ditch/culvert originated north of the TCC Site on what is now the current Federal Express property, and, from at least the early 1900s to 2008, carried industrial wastewater and stormwater from approximately 700 acres of industrialized property. This concrete structure was installed by the City in or around 1956, prior to the commencement of TCC's operations at the site. The concrete ditch/culvert remained part of the City's active sewer and drainage system until December 2008 when a new City owned sewer system was installed under Avenue L.

The former Albert Steel Drum Site, also known as the Prentiss Drug & Chemical Company, Inc. Site, (hereinafter the "ASD Site"), which is located directly north of the TCC Site, historically utilized two drainage ditches beginning at Wilson Avenue and flowing south to the TCC Site. The ditch more towards the west flowed south through the TCC Site upstream of Pierson's Creek (hereinafter referred to the "Western Ditch"). The source of the Western Ditch was the storm water discharge point for the ASD Site and the Wilson Avenue area storm water network, which received storm water from much or most of the industrial property within the Ironbound section

of Newark. The Western Ditch proceeded south to the concrete-lined ditch running through the TCC Site.

To the east of the Western Ditch was a large area of storm water ponding located immediately north of and discharged into an unlined drainage ditch flowing south along the eastern TCC Site boundary eventually converging with Pierson's Creek (hereinafter referred to as the "Eastern Ditch"). The upstream areas of both the Eastern and Western Ditches were filled (at different times) during implementation of remedial actions and/or site redevelopment activities on the ASD Site.

Starting in the late nineteenth century the City was fully aware that industrial waste was being discharged to its sewer and drainage system, which included Pierson's Creek and the concrete ditch/culvert located on what is now the FedEx and TCC Sites. Continuing into the twentieth century, the City-owned sewer and drainage system carried industrial waste and stormwater from over 700 acres of industrial property in Newark's Ironbound area.

Throughout the early 1990s, the City and the New Jersey Department of Environmental Protection ("NJDEP") were discussing suitable solutions to the drainage issues that existed along Avenue L and, in particular, drainage issues associated with an easement held by the City known as Pierson's Creek that runs through the former ASD Site and the TCC Site. *See* March 17, 1995 Letter from NJDEP to City at TCC0398-TCC0399. NJDEP advised the City that NJDEP needed to review the engineering design prior to the commencement of any work along Pierson's Creek in order "to ensure that all actions taken at the site complement the Department's future plans for remediation of the site." *Id.* NJDEP advised that the work by the City can be performed with a Memorandum of Agreement between the City and NJDEP, and that the City would be responsible for the "dredging/excavation and stabilization of Pierson's Creek." *Id.* Any dredged or excavated material would be stored on site and either the other property owners or the City would then be responsible for properly disposing of the material. *Id.*

On November 19, 1996, the City filed an application to enter a Memorandum of Agreement with NJDEP for certain remedial work of Pierson's Creek. *See* TCC0400-TCC0405. In the application, the City stated that it suspects the sediments within Pierson's Creek contain mercury, arsenic, heavy metals, VOCs, SVOCs, and PHC. *Id.*

In December 1996, the City filed an Order to Show Cause against TCC and a First Amended Verified Complaint in which it sought access to the TCC Site. In the City's Brief in Support of its Request for Immediate Interim Relief against TCC, the City admitted that: (1) Pierson's Creek is an easement granted to the City, which gave the City the right to enter the TCC Site to gain access to Pierson's Creek; and (2) the City is authorized to maintain all public drains, which includes Pierson's Creek. *See* TCC0406-TCC0417.

Following a dismissal of the Order to Show Cause, on or around December 24, 1996, the City entered into a Memorandum of Agreement (hereinafter the "Newark MOA") with the NJDEP. *See* December 1996 Memorandum of Agreement between the City and NJDEP at TCC0418-TCC0424. Pursuant to the Newark MOA, the intent of the agreement was to "allow City of Newark to conduct any of the remedial activities outlined herein with oversight from the Department" at certain real property that the City has an easement known as Pierson's Creek and

designated as Block 5038, Lot 98, located between Wilson Avenue and Delancy Street [the TCC plant site]. *Id.* The City agreed to submit the following: (1) remedial investigation Workplan; (2) Remedial Investigation Report; (3) Remedial Action Workplan; and (4) Remedial Action Report. *Id.*

On or about December 24, 1996, NJDEP provided comments on the proposed Workplan submitted by the City. In its Workplan, the City included the portions of Pierson's Creek that traversed the ASD Site and the TCC Site, but did not include the additional contaminated sites that Pierson's Creek traverses. *See* December 24, 1996 letter from NJDEP to the City at TCC0425-TCC0432. NJDEP stated that it will require that all contaminated sites within the study area be identified and any identified contamination conditions that may impact or be impacted by the City's project should be addressed in the Remedial Investigation Report. *Id.* Following subsequent discussions with NJDEP and without formally terminating the Newark MOA, the City appears to have abandoned its obligations under the terms of the Newark MOA and as the admitted owner of Pierson's Creek.

In sum, the area in and around the TCC property has been in heavy industrial use for over 150 years. A significant portion of the upgradient properties to the site fall within an approximately 700 acre storm water and industrial waste water catchment area that historically contributed to the contamination in the concrete ditch/culvert at the site. The concrete ditch and culvert were part of the regional stormwater and waste water system built by the City on land subject to an easement held by the City. Waste water and stormwater from upgradient properties discharged into channels and sewers that connected to the concrete ditch/culvert that traverses the TCC site prior to connecting to Pierson's Creek.

**27) If known, when was Pierson's Creek plugged at both ends on the Troy Chemical property?**

**RESPONSE:** In 2008, the City of Newark completed an underground box culvert on the southern adjoining property as part of their Wilson Avenue Drainage Improvement Project. The culvert discharges to an unlined storm water channel that traverses the property directly south of TCC in a north-south orientation. Until this point, the City of Newark would not allow the sealing of the concrete ditch/culvert as it was a key storm water feature in this flood-prone area. A storm water discharge pipe from the adjoining FedEx property fed into the concrete ditch/culvert at the northern end of the TCC site. In December 2008, TCC coordinated with the developers of the FedEx property and NJDEP to seal the northern end of the concrete ditch. This prevented storm water discharging from the FedEx property downstream into the concrete ditch/culvert and allowed the remediation of the concrete ditch/culvert to proceed. In 2012 the southern end of the concrete ditch/culvert was also sealed with concrete, preventing surface water from flowing out of the concrete ditch/culvert.

**28) Please provide a detailed description of any civil, criminal or administrative proceedings against Troy Chemical during its operations at the facility for violations of any local, state or federal laws or regulations relating to water pollution or hazardous waste generation, storage, transport or disposal. Provide copies of all pleadings and depositions or other testimony given in these proceedings.**

**RESPONSE:** TCC and Troy Corporation object to this request as overbroad – there may be violations that have no possible nexus to the Pierson’s Creek site, including paperwork violations or other violations that involved no environmental release. Notwithstanding this objection and the objections set forth in Appendix A, TCC and Troy Corporation provide the following documents regarding legal or regulatory proceedings relating to violations that could have some potential relevance to environmental releases: See TCC0433-TCC0477.

**29) Please provide the name address, telephone number, title and occupation of the person(s) answering this “Request for Information” and state whether such person(s) has personal knowledge of the responses. In addition, identify each person who assisted in any way in responding to the “Request for Information” and specify the question to which each person assisted in responding. Please include the names and addresses of former employees who were contacted to respond to any of the questions.**

**RESPONSE:** The person answering this RFI is: William B. Smith, Executive Vice President and Chief Operating Officer, TCC. Telephone: 973.443.4200 ext. 2279.

The following persons assisted in responding to the RFI:

Daryl Smith, Chairman, President, & Chief Executive Officer, Troy Corporation (all responses)  
Al Gerardo, Vice President, Government Relations, TCC (all responses)  
Dennis Toft, Partner, Chiesa, Shahinian & Giantomasi, PC (all responses)  
Cynthia Taub, Partner, Steptoe & Johnson LLP (all responses)  
Seth Goldberg, Partner, Steptoe & Johnson LLP (all responses)



**List of Attachments**

Certification

Appendix A – Objections

Appendix B – Substantiation of Confidentiality Claims

Responsive Documents Enclosed on CD.

## Appendix A

### General Objections

General Objection No. 1: TCC and Troy Corporation object to the EPA Information Request to the extent that it exceeds the authority granted to the U.S. Environmental Protection Agency under Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9604(e).

As provided in Section 104(e)(1) of CERCLA, 42 U.S.C. §9604(e)(1), the “authority of this subsection [Section 104(e)] may be exercised *only* for the purposes of determining the need for response, or choosing or taking any response action *under this subchapter*, or otherwise *enforcing the provisions of this subchapter*.” Since Section 104(e) may only be invoked for these purposes, a necessary predicate for the invocation of Section 104(e) information request authority is limited to information regarding a release or threatened release of hazardous substances, or pollutants or contaminants that present an imminent and substantial danger to public health or welfare, subject to CERCLA enforcement authority.

General Objection No. 2: TCC and Troy Corporation object to the EPA Information Request to the extent that it seeks information not relevant to the purposes stated in the U.S. EPA’s letter dated February 26, 2019 and CERCLA Section 104(e).

General Objection No. 3: TCC and Troy Corporation object to the EPA Information Request as having been improperly addressed and served. EPA addressed the Information Request to Troy Corporation at the following address: 8 Vreeland Road, P.O. Box 955, Florham Park, NJ. Troy Corporation is not an owner or operator of the plant site at One Avenue L in Newark. The current owner and operator of that site is Troy Chemical Corporation and all requests for information or other correspondence regarding the site should be directed to TCC as follows:

Troy Chemical Corporation, Inc.  
Attn: Christopher E. Smith, President  
One Avenue L  
Newark, NJ 07105

General Objection No. 4: TCC and Troy Corporation object to the EPA Information Request as unreasonable to the extent that it purports to establish an unreasonably short timeframe for response. The Information Request purports to demand a series of compilations of data and other information, covering decades of operations, when such data is not kept in the ordinary course and is not easily accessed or compiled.

General Objection No. 5: TCC and Troy Corporation object to the EPA Information Request as overly broad, unreasonable in scope, and unduly burdensome.

## Appendix B

### Substantiation for Confidentiality Claims

The attached response by Troy Chemical Corporation (“TCC”) and Troy Corporation to the USEPA information request includes several documents and responses marked as confidential. This appendix provides the substantiation for the confidentiality claims made for the following documents: 1) the TCC Corporate Organization Chart; 2) 1980 Asset Purchase Agreement; and 3) 1991 Stock Exchange Agreement (hereinafter referred to collectively as “the Documents”). In addition, this substantiation covers the excerpts or descriptions of the Documents marked as confidential in the attached response.

Pursuant to 40 CFR § 2.203, Troy provides the following information:

- TCC and Troy Corporation are claiming confidentiality with regard to the entirety of the Documents.
- The Documents should be protected from disclosure indefinitely. There is no foreseeable time when the confidential information in the Documents will lose its confidential status.
- TCC and Troy Corporation maintain the Documents as strictly confidential. This information is safeguarded from public release and is made available only on a limited, need-to-know basis. When similar information is contained in agreements or communications with third parties, it is subject to non-disclosure agreements with those parties.
- As detailed below, the Documents contain confidential information, the disclosure of which would likely cause substantial harm to TCC and Troy Corporation’s competitive positions. This confidential information is thus protected from disclosure pursuant to the Trade Secrets Act, 18 U.S.C. § 1905, and FOIA Exemption 4. *See* 5 U.S.C. § 552(b)(4) (protecting “trade secrets and commercial or financial information obtained from a person and privileged or confidential”).

The Trade Secrets Act, 18 U.S.C. § 1905, prohibits the disclosure of the same type of information covered by FOIA Exemption 4. *See, e.g., General Electric Co. v. NRC*, 750 F.2d 1394, 1402 (7th Cir. 1984); *General Motors Corp. v. Marshall*, 654 F.2d 294, 297 (4th Cir. 1981). To qualify for protection under FOIA Exemption 4, information must be (1) commercial or financial; (2) obtained from a person; and (3) privileged or confidential. *Public Citizen Health Research Group v. FDA*, 740 F.2d 1280, 1290 (D.C. Cir. 1983). The first two prongs of this test are quite broad. Records are considered to be commercial “so long as the submitter has a ‘commercial interest’ in them.” Department of Justice Guide to the Freedom of Information Act 267 (quotation omitted). And records “obtained from a person” include records obtained from individuals, corporations, and a wide range of other entities. *See id.* at 271. The third “privileged or confidential” prong of the Exemption 4 test requires a showing that disclosure of the information would “cause substantial harm to the competitive position of the person from

whom the information was obtained.” *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 767 (D.C. Cir. 1974); *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

The Documents clearly satisfy the *National Parks* test because they contain commercial information the disclosure of which would cause substantial harm to TCC and Troy Corporation’s competitive positions. TCC and Troy Corporation maintain the Documents as strictly confidential. This information is safeguarded from public release and is made available only on a limited, need-to-know basis. When similar information is contained in agreements or communications with third parties, it is subject to non-disclosure agreements with those parties. Accordingly, all of the information in the Documents is customarily kept confidential by TCC and Troy Corporation and is therefore protected under the plain language of Exemption 4 and *National Parks*.



Disclosure of these Documents would cause TCC and Troy Corporation substantial competitive harm. Similar confidential agreements and corporate structure and ownership information are well-recognized to be within the scope of Exemption 4. *See, e.g., National Parks & Conservation Ass’n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976) (substantial harm to competitive positions from disclosure of financial records is “virtually axiomatic,” for such information “would provide competitors with valuable insights into . . . operational strengths and weaknesses” and would aid competitors in strategic planning); *Judicial Watch, Inc. v. U.S. Dep’t of Commerce*, 337 F. Supp. 2d 146, 170 (D.D.C. 2004) (protecting finance agreement, because otherwise agency “would face difficulty negotiating future agreements with borrowers fearful of disclosure”); *Nadler v. FDIC*, 899 F. Supp. 158, 161-63 (S.D.N.Y. 1995) (protecting joint venture agreement because disclosure could “hurt the venture’s prospects for financial success”), *aff’d* on other grounds, 92 F.3d 93, 96 (2d Cir. 1996); *National Community Reinvestment Coalition v. National Credit Union Admin.*, 290 F. Supp. 2d 124, 135 (D.D.C. 2003) (“Business and marketing plans by their very nature usually contain information that would cause competitive harm if disclosed.”); *See Defenders of Wildlife v. U.S. Dep’t of the Interior*, 314 F. Supp. 2d 1, 15 (D.D.C. 2004) (severance agreements which contained “financial information surrounding [the Deputy Secretary’s] separation from his former company . . . are within the common understanding of the term ‘financial information’”); *RMS Indus. v. DOD*, No. C-92-1545, slip op. at 3, 6 (N.D. Cal. Nov. 24, 1992) (exempting release of “names and background of key employees and suppliers”).

In sum, the information in the Documents is treated as proprietary and confidential within TCC and Troy Corporation and would not be released by the companies except in conjunction with

strict confidentiality agreements and protections. The release of the information in the Documents would harm TCC and Troy Corporation's competitive positions. Therefore, the Documents are protected from release under § 1905 and Exemption 4.

CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION

State of New Jersey:

County of Morris:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (answers to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that my company is under a continuing obligation to supplement its response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or the company's answers thereto should become known or available to the company.

William B. Smith

NAME

Executive Vice President and Chief Operating Officer, Troy Chemical Corporation, Inc.

TITLE

William B. Smith

SIGNATURE

Sworn to before me this 28<sup>th</sup> day of May, 2019

Lisette Silletti

Notary Public Signature

**LISETTE SILLETTI**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires 12/18/2022**